REMARKS

Claims 1-3, 5-12, 14-19, 21-23, 31 and 33 are pending and under consideration. Claims 21-23 are withdrawn from consideration as being directed to non-elected inventions. In the Final Office Action of August 4, 2003, the Examiner made the following disposition:

A.) Rejected claims 1-3, 5-12, 14-19, 31 and 33 under 35 U.S.C. §112, first paragraph.

B.) Rejected claims 1-3, 5-12, 14-19, 31 and 33 under 35 U.S.C. §112, second paragraph.

C.) Rejected claims 1-3, 5-12, 14-17, 31 and 33 under 35 U.S.C. §103(a) as being unpatentable over *Kester* in view of *Cheng*.

D.) Rejected claims 18 and 19 under 35 U.S.C. §103(a) as being unpatentable over *Kester* in view of *Valyi*.

E.) Rejected claims 1-3, 5-12, 14-19, 31 and 33 under 35 U.S.C. §103(a) as being unpatentable over *Yazaki et al.* in view of *Cheng* and *Kester*.

Applicant respectfully traverses the rejections and addresses the Examiner's disposition below:

A.) Rejection of claims 1-3, 5-12, 14-19, 31 and 33 under 35 U.S.C. §112, first paragraph:

Claim 1 has been amended as per the Examiner's request to overcome the rejection.

Claims 2-3, 5-12, 14-19, 31 and 33 depend directly or indirectly from claim 1 and are therefore allowable for at least the same reasons that claim 1 is allowable.

Applicant respectfully submits the rejection has been overcome and requests that it be withdrawn.

B.) Rejection of claims 1-3, 5-12, 14-19, 31 and 33 under 35 U.S.C. §112, second paragraph:

Claim 1 has been amended as per the Examiner's request to overcome the rejection.

Claims 2-3, 5-12, 14-19, 31 and 33 depend directly or indirectly from claim 1 and are therefore allowable for at least the same reasons that claim 1 is allowable.

Applicant respectfully submits the rejection has been overcome and requests that it be withdrawn.

C.) Rejection of claims 1-3, 5-12, 14-17, 31 and 33 under 35 U.S.C. §103(a) as being unpatentable over *Kester* in view of *Cheng*:

Applicant respectfully disagrees with the rejection.

Applicant's independent claim 1 claims a plastic molded container comprising a blow-molded bowl having an upper rim, a bottom, a central axis and a sidewall extending between the upper rim and the bottom. The blow-molded bowl is configured to resist deformation during a hot fill or retort application. The rim is configured for accepting a lid in engagement therewith. The sidewall in cross sectional profile is a smooth continuous curve between the upper rim and the bottom, and the sidewall extends radially outwardly before extending radially inwardly as the continuous sidewall extends downward between the upper rim and the bottom to provide a bulging continuous sidewall. The sidewall further has a diameter, which is perpendicular to the central axis and is larger than the height of the bowl, the height being the distance between the bottom and the upper rim. The blow-molded bowl further comprises at least three feet disposed on the bottom, the feet being co-formed with the bottom and configured to extend symmetrically along the bottom.

As described in Applicant's specification, although plastic hot-fill containers and plastic retort containers are known, they are typically configured to be deformable or to include expansion members to accommodate volumetric changes of their contents during cooling of a hot-fill container or during heating of a retort container. Rigid containers for hot-fill and retort applications are not typical. (Specification, page 1, lines 24-27). Applicant's claimed container is inventively configured to resist deformation during a hot fill or retort application. The claimed bowl shape resists paneling and other deformations even during a retort process in which items are first sealed in the container and then the container is subjected to heating and cooling. (Specification, page 7, lines 15-21).

Typical plastic containers cannot withstand the extreme conditions of a hot-fill or retort process. Straight sidewalls of typical containers deform as the heat and internal container pressure contort the typical containers, which fail to regain their original shapes. Typical containers that have rounded sidewalls also experience permanent deformation because their sidewalls typically flex and because they do not have Applicant's claimed sidewall geometry.

Kester in view of *Cheng* clearly fails to disclose or suggest Applicant's claimed container. To begin with, *Kester* is clearly not a retortable or hot-fillable container. Referring to *Kester* Figures 1-3, *Kester* discloses ornamental pitchers 10 and 12 that have open tops with pour spouts. One having skill in the art would not look to these open-topped containers with spouts, that are described in *Kester* as ornamental pitchers, as containers that are designed for the extreme hot-fill or retort conditions. Neither of *Kester's* containers 10 or 12 can accommodate a sealable lid, and therefore could not be used in a retort process that requires high pressures within the container. And *Kester* fails to even describe that its containers 10 or 12 have a flexibility, rigidity, material, or shape that can accommodate a hot-fill or retort application. Therefore, *Kester* alone fails to disclose or suggest a hot-fillable or retortable container. And for the reasons described above, Applicant submits that there is no teaching in *Kester* to combine *Kester* with another reference to teach a hot-fillable or retortable plastic container.

Therefore, one having skill in the art would not be motivated to combine *Kester* with *Cheng* to disclose or suggest Applicant's claim 1. Further, *Cheng* is clearly not a hot-fillable or retortable container. First, *Cheng* fails to even describe that its container is suitable for hot-fill or retort applications. And second, one having skill in the art would recognize that *Cheng's* container could not withstand a hot-fill or retort application. *Cheng's* container has long straight sidewalls that would require some type of expansion component to withstand the extreme conditions of a hot-fill or retort process. *Cheng* simply does not teach such a component. *Cheng* describes that its container can withstand the pressures of a carbonated beverage, but *Cheng* fails to disclose a container that can withstand the pressures and temperature conditions of a hot-fill or retort process. As *Cheng* also fails to even teach that its container is suitable for hot-fill or retort applications, one having skill in the art would not have combined *Kester* with *Cheng* to arrive at a hot-fillable or retortable container.

Further, *Kester* discloses an open-topped spouted ornamental pitcher, and *Cheng* discloses a typical substantially closed-topped bottle for carbonated beverages. The two containers have completely different geometries and purposes, and therefore there would have been no motivation to combine the bottles.

Neither *Kester* nor *Cheng,* taken singly or in combination, discloses or suggests Applicant's claimed elements that inventively disclose a hot-fillable or retortable container. Therefore, *Kester* in view of *Cheng* fails to disclose or suggest Applicant's claim 1.

Claims 2-3, 5-12, 14-17, 31 and 33 depend directly or indirectly from claim 1 and are therefore allowable for at least the same reasons that claim 1 is allowable.

Applicant respectfully submits the rejection has been overcome and requests that it be withdrawn.

D.) Rejection of claims 18 and 19 under 35 U.S.C. §103(a) as being unpatentable over *Kester* in view of *Valyi*:

Applicant respectfully disagrees with the rejection.

Applicant's independent claim 1 is allowable over *Kester* as discussed above. *Valyi* still fails to disclose or suggest a container that can withstand a hot-fill or retort process. *Valyi* teaches a container that is similar to *Cheng's* container. *Valyi's* container has long straight sides that have no flexing component to withstand hot-fill or retort conditions. Further, for the reasons described above with respect to *Kester* and *Cheng*, there would have been no motivation to combine *Kester's* ornamental pitcher with *Valyi's* container. Therefore, *Kester* in view of *Valyi* still fails to disclose or suggest claim 1.

Claims 18 and 19 depend directly or indirectly from claim 1 and are therefore allowable for at least the same reasons that claim 1 is allowable.

Applicant respectfully submits the rejection has been overcome and requests that it be withdrawn.

E.) Rejection of claims 1-3, 5-12, 14-19, 31 and 33 under 35 U.S.C. §103(a) as being unpatentable over *Yazaki et al.* in view of *Cheng* and *Kester*:

Applicant respectfully disagrees with the rejection.

Applicant's independent claim 1 is allowable over *Kester* in view of *Cheng* as discussed above. *Yazaki* still fails to disclose or suggest a container that can withstand a hot-fill or retort process. *Yazaki* teaches a container that is similar to *Cheng's* container. *Yazaki's* container has long straight sides that have no flexing component to withstand hot-fill or retort conditions. Further, for the reasons described above with respect to *Kester* and *Cheng*, there would have been no motivation to combine *Kester's* ornamental pitcher with *Yazaki's* container. Therefore, *Yazaki* in view of *Cheng* and *Kester* fails to disclose or suggest claim 1.

Claims 2-3, 5-12, 14-19, 31 and 33 depend directly or indirectly from claim 1 and are therefore allowable for at least the same reasons that claim 1 is allowable.

Applicant respectfully submits the rejection has been overcome and requests that it be withdrawn.

CONCLUSION

In view of the foregoing, it is submitted that claims 1-3, 5-12, 14-19, 31 and 33 are patentable. It is therefore submitted that the application is in condition for allowance. Notice to that effect is respectfully requested.

Respectfully submitted,

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